UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL J. WILLIAMS, KIMBERLY J. HIRSCH,
PETER G. KOPPERMAN, MARTIN T. SCHULZ,
DAVID N. VOTH, MICHAEL W. KOCH,
RICHARD N. PLOTNICK and PETER A. SIMON

Appeal 2006-2147
Application 09/593,106
Technology Center 3600

Decided: October 31, 2007

Before TERRY J. OWENS, LINDA E. HORNER, and
ANTON W. FETTING, *Administrative Patent Judges*.[1]

OWENS, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

The Appellants request reconsideration of our decision mailed March 27, 2007 wherein we affirmed the rejections under 35 U.S.C. § 103 of claims 1, 4-8, 10, 28, 31-33, 35, 53 and 54 over Walker (US 6,088,686),

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[1] APJ Horner has been substituted for APJ Levy who has retired since the decision was mailed.

and claims 2, 11-14, 16, 23, 25, 26, 29, 36-39, 41 and 55-58 over Walker in view of Dykstra (US 6,029,149).

The Appellants argue that Walker's conditional approval is not an approval as that term is used by the Appellants because it is generated after the borrower has already selected a credit qualified offer (Request 5-7). In support of that argument the Appellants rely upon a figure created by the Appellants wherein Walker's "finish session common process" (fig. 51) comes first (Request 6-8). Walker, however, discloses receiving a customer's financial information and evaluating it (fig. 41), then notifying the customer of conditional preapproval pending verifications (fig. 47), and then presenting any system generated credit qualified offers to the customer for selection (fig. 51). Like Walker's conditional approval (col. 6, ll. 10-15), the Appellants' underwriting engine's "approved" recommendation is followed by verification (Spec. 39-41).[2]

The Appellants argue that Walker does not disclose underwriting credit products using underwriting guidelines of a secondary mortgage market purchaser (Request 11). The Appellants acknowledge that it was known in the mortgage art for a primary lender to sell mortgages to a

[2] As pointed out by the Appellants (Request 8-11), the Appellants' provision of a likelihood of approval referred to in our decision (Decision 4) is done by probable qualification calculator software rather than by the underwriting engine (Spec. 12-13). The underwriting engine, however, like Walker, provides "approved" recommendations that are subject to verification (Spec. 39-41).

secondary mortgage market purchaser to get new funds to make more mortgage loans (Spec. 1-2). One of ordinary skill in the art, through no more than ordinary creativity, would have expected the secondary mortgage market purchaser to be more likely to buy the mortgage if it complies with the secondary mortgage market purchaser's guidelines. *See KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1742, 82 USPQ2d 1385, 1397 (2007) ("A person of ordinary skill is also a person of ordinary creativity, not an automaton"). For that reason it would have been prima facie obvious to a primary lender to base Walker's conditional approval at least in part on a secondary mortgage market purchaser's underwriting guidelines.

We therefore decline to make any change to our decision.

REHEARING DENIED

vsh

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